

AMENDED IN ASSEMBLY JUNE 15, 2012

AMENDED IN SENATE MAY 31, 2011

AMENDED IN SENATE MAY 17, 2011

AMENDED IN SENATE APRIL 26, 2011

AMENDED IN SENATE MARCH 24, 2011

## SENATE BILL

No. 443

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**Introduced by Senator ~~Strickland~~ Emmerson**  
(Principal coauthor: Assembly Member Achadjian)  
(Coauthor: ~~Senator Blakeslee~~)

February 16, 2011

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*An act to amend Sections 1170, 3456, and 12022 of the Penal Code, relating to ~~a veterans' memorial~~ sentencing.*

### LEGISLATIVE COUNSEL'S DIGEST

SB 443, as amended, ~~Strickland~~ Emmerson. ~~Veterans' memorial. Sentencing: felonies.~~

*Existing law generally provides that nonviolent and nonserious felonies are punishable by imprisonment in a county jail for 16 months, or 2 or 3 years, or, where the term is specified, for the term described in the underlying offense. Notwithstanding these provisions, existing law requires that a sentence be served in state prison if the defendant has a prior or current conviction for a serious or violent felony, has a prior felony conviction in another jurisdiction that has all of the elements of a serious or violent felony, is required to register as a sex offender, or has an aggravated white collar crime enhancement imposed as part of the sentence.*

*This bill would specify that no further pleading or proof of an offense, prior conviction, enhancement, or requirement to register as a sex offender that makes a person ineligible to serve a term of imprisonment in a county jail pursuant to those provisions is required. The bill would also require that a person convicted of one or more felonies committed while the person is on mandatory supervision serve the remaining time on the mandatory supervision term, as well as the new term of imprisonment, in state prison. The bill would provide that any person sentenced to mandatory supervision upon suspension of execution of his or her county jail term, and his or her residence and possessions, would be subject to search or seizure at any time, with or without a warrant and with or without cause, by an agent of the supervising county agency or by a peace officer, as specified.*

*Under the Postrelease Community Supervision Act of 2011, certain felons, upon release from prison, are subject to community supervision provided by a county agency designated by the county's board of supervisors, and requires the county agency to maintain postrelease supervision over the person until one of specified listed events occurs, including, but not limited to, if jurisdiction over the person has been terminated by operation of law.*

*This bill would expand the list of events that terminates postrelease supervision to include termination of jurisdiction by a new term of imprisonment for 3 years or longer for a new criminal conviction. The bill would also specify that time during which a person on postrelease supervision is in custody for a custodial sanction of a postrelease supervision condition or a new criminal conviction shall not be credited toward a discretionary 6-month discharge or a mandatory 12-month discharge.*

*Existing law provides for a sentence enhancement of an additional and consecutive term of imprisonment of 3, 4, or 5 years in a county jail for any person who is armed with a firearm in the commission of a violation or attempted violation of certain offenses relating to the sale, manufacture, or possession of controlled substances.*

*This bill would provide for a sentence enhancement of an additional and consecutive term of imprisonment for 3, 4, or 5 years in state prison instead of a county jail.*

~~Existing law provides that the Department of Transportation has full possession and control of all state highways. Under existing law, if the department determines that real property is no longer necessary for highway purposes, the department may sell or exchange the real property~~

~~based on terms established by the California Transportation Commission.~~

~~This bill would authorize the Department of Transportation to sell excess real property in the state-owned area associated with the park-and-ride lot at the Clark Avenue West exit from State Highway Route 135 in the Town of Orcutt to the County of Santa Barbara for purposes of erecting a veterans' memorial.~~

~~This bill would make legislative findings and declarations as to the necessity of a special statute for the Town of Orcutt.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 1170 of the Penal Code, as amended by*  
2     *Section 6.7 of Chapter 361 of the Statutes of 2011, is amended to*  
3     *read:*

4     1170. (a) (1) The Legislature finds and declares that the  
5     purpose of imprisonment for crime is punishment. This purpose  
6     is best served by terms proportionate to the seriousness of the  
7     offense with provision for uniformity in the sentences of offenders  
8     committing the same offense under similar circumstances. The  
9     Legislature further finds and declares that the elimination of  
10    disparity and the provision of uniformity of sentences can best be  
11    achieved by determinate sentences fixed by statute in proportion  
12    to the seriousness of the offense as determined by the Legislature  
13    to be imposed by the court with specified discretion.

14    (2) Notwithstanding paragraph (1), the Legislature further finds  
15    and declares that programs should be available for inmates,  
16    including, but not limited to, educational programs, that are  
17    designed to prepare nonviolent felony offenders for successful  
18    reentry into the community. The Legislature encourages the  
19    development of policies and programs designed to educate and  
20    rehabilitate nonviolent felony offenders. In implementing this  
21    section, the Department of Corrections and Rehabilitation is  
22    encouraged to give priority enrollment in programs to promote  
23    successful return to the community to an inmate with a short  
24    remaining term of commitment and a release date that would allow  
25    him or her adequate time to complete the program.

1 (3) In any case in which the punishment prescribed by statute  
2 for a person convicted of a public offense is a term of imprisonment  
3 in the state prison of any specification of three time periods, the  
4 court shall sentence the defendant to one of the terms of  
5 imprisonment specified unless the convicted person is given any  
6 other disposition provided by law, including a fine, jail, probation,  
7 or the suspension of imposition or execution of sentence or is  
8 sentenced pursuant to subdivision (b) of Section 1168 because he  
9 or she had committed his or her crime prior to July 1, 1977. In  
10 sentencing the convicted person, the court shall apply the  
11 sentencing rules of the Judicial Council. The court, unless it  
12 determines that there are circumstances in mitigation of the  
13 punishment prescribed, shall also impose any other term that it is  
14 required by law to impose as an additional term. Nothing in this  
15 article shall affect any provision of law that imposes the death  
16 penalty, that authorizes or restricts the granting of probation or  
17 suspending the execution or imposition of sentence, or expressly  
18 provides for imprisonment in the state prison for life. In any case  
19 in which the amount of preimprisonment credit under Section  
20 2900.5 or any other provision of law is equal to or exceeds any  
21 sentence imposed pursuant to this chapter, the entire sentence shall  
22 be deemed to have been served and the defendant shall not be  
23 actually delivered to the custody of the secretary. The court shall  
24 advise the defendant that he or she shall serve a period of parole  
25 and order the defendant to report to the parole office closest to the  
26 defendant's last legal residence, unless the in-custody credits equal  
27 the total sentence, including both confinement time and the period  
28 of parole. The sentence shall be deemed a separate prior prison  
29 term under Section 667.5, and a copy of the judgment and other  
30 necessary documentation shall be forwarded to the secretary.

31 (b) When a judgment of imprisonment is to be imposed and the  
32 statute specifies three possible terms, the choice of the appropriate  
33 term shall rest within the sound discretion of the court. At least  
34 four days prior to the time set for imposition of judgment, either  
35 party or the victim, or the family of the victim if the victim is  
36 deceased, may submit a statement in aggravation or mitigation. In  
37 determining the appropriate term, the court may consider the record  
38 in the case, the probation officer's report, other reports, including  
39 reports received pursuant to Section 1203.03, and statements in  
40 aggravation or mitigation submitted by the prosecution, the

1 defendant, or the victim, or the family of the victim if the victim  
2 is deceased, and any further evidence introduced at the sentencing  
3 hearing. The court shall select the term which, in the court's  
4 discretion, best serves the interests of justice. The court shall set  
5 forth on the record the reasons for imposing the term selected and  
6 the court may not impose an upper term by using the fact of any  
7 enhancement upon which sentence is imposed under any provision  
8 of law. A term of imprisonment shall not be specified if imposition  
9 of sentence is suspended.

10 (c) The court shall state the reasons for its sentence choice on  
11 the record at the time of sentencing. The court shall also inform  
12 the defendant that as part of the sentence after expiration of the  
13 term he or she may be on parole for a period as provided in Section  
14 3000.

15 (d) When a defendant subject to this section or subdivision (b)  
16 of Section 1168 has been sentenced to be imprisoned in the state  
17 prison and has been committed to the custody of the secretary, the  
18 court may, within 120 days of the date of commitment on its own  
19 motion, or at any time upon the recommendation of the secretary  
20 or the Board of Parole Hearings, recall the sentence and  
21 commitment previously ordered and resentence the defendant in  
22 the same manner as if he or she had not previously been sentenced,  
23 provided the new sentence, if any, is no greater than the initial  
24 sentence. The resentence under this subdivision shall apply the  
25 sentencing rules of the Judicial Council so as to eliminate disparity  
26 of sentences and to promote uniformity of sentencing. Credit shall  
27 be given for time served.

28 (e) (1) Notwithstanding any other law and consistent with  
29 paragraph (1) of subdivision (a), if the secretary or the Board of  
30 Parole Hearings or both determine that a prisoner satisfies the  
31 criteria set forth in paragraph (2), the secretary or the board may  
32 recommend to the court that the prisoner's sentence be recalled.

33 (2) The court shall have the discretion to resentence or recall if  
34 the court finds that the facts described in subparagraphs (A) and  
35 (B) or subparagraphs (B) and (C) exist:

36 (A) The prisoner is terminally ill with an incurable condition  
37 caused by an illness or disease that would produce death within  
38 six months, as determined by a physician employed by the  
39 department.

1 (B) The conditions under which the prisoner would be released  
2 or receive treatment do not pose a threat to public safety.

3 (C) (i) The prisoner is permanently medically incapacitated  
4 with a medical condition that renders him or her permanently  
5 unable to perform activities of basic daily living, and results in the  
6 prisoner requiring 24-hour total care, including, but not limited to,  
7 coma, persistent vegetative state, brain death,  
8 ventilator-dependency, loss of control of muscular or neurological  
9 function, and that incapacitation did not exist at the time of the  
10 original sentencing.

11 ~~The~~  
12 (ii) *The* Board of Parole Hearings shall make findings pursuant  
13 to this subdivision before making a recommendation for resentence  
14 or recall to the court. This subdivision does not apply to a prisoner  
15 sentenced to death or a term of life without the possibility of parole.

16 (3) Within 10 days of receipt of a positive recommendation by  
17 the secretary or the board, the court shall hold a hearing to consider  
18 whether the prisoner's sentence should be recalled.

19 (4) Any physician employed by the department who determines  
20 that a prisoner has six months or less to live shall notify the chief  
21 medical officer of the prognosis. If the chief medical officer  
22 concurs with the prognosis, he or she shall notify the warden.  
23 Within 48 hours of receiving notification, the warden or the  
24 warden's representative shall notify the prisoner of the recall and  
25 resentencing procedures, and shall arrange for the prisoner to  
26 designate a family member or other outside agent to be notified  
27 as to the prisoner's medical condition and prognosis, and as to the  
28 recall and resentencing procedures. If the inmate is deemed  
29 mentally unfit, the warden or the warden's representative shall  
30 contact the inmate's emergency contact and provide the information  
31 described in paragraph (2).

32 (5) The warden or the warden's representative shall provide the  
33 prisoner and his or her family member, agent, or emergency  
34 contact, as described in paragraph (4), updated information  
35 throughout the recall and resentencing process with regard to the  
36 prisoner's medical condition and the status of the prisoner's recall  
37 and resentencing proceedings.

38 (6) Notwithstanding any other provisions of this section, the  
39 prisoner or his or her family member or designee may  
40 independently request consideration for recall and resentencing

1 by contacting the chief medical officer at the prison or the  
2 secretary. Upon receipt of the request, the chief medical officer  
3 and the warden or the warden's representative shall follow the  
4 procedures described in paragraph (4). If the secretary determines  
5 that the prisoner satisfies the criteria set forth in paragraph (2), the  
6 secretary or board may recommend to the court that the prisoner's  
7 sentence be recalled. The secretary shall submit a recommendation  
8 for release within 30 days in the case of inmates sentenced to  
9 determinate terms and, in the case of inmates sentenced to  
10 indeterminate terms, the secretary shall make a recommendation  
11 to the Board of Parole Hearings with respect to the inmates who  
12 have applied under this section. The board shall consider this  
13 information and make an independent judgment pursuant to  
14 paragraph (2) and make findings related thereto before rejecting  
15 the request or making a recommendation to the court. This action  
16 shall be taken at the next lawfully noticed board meeting.

17 (7) Any recommendation for recall submitted to the court by  
18 the secretary or the Board of Parole Hearings shall include one or  
19 more medical evaluations, a postrelease plan, and findings pursuant  
20 to paragraph (2).

21 (8) If possible, the matter shall be heard before the same judge  
22 of the court who sentenced the prisoner.

23 (9) If the court grants the recall and resentencing application,  
24 the prisoner shall be released by the department within 48 hours  
25 of receipt of the court's order, unless a longer time period is agreed  
26 to by the inmate. At the time of release, the warden or the warden's  
27 representative shall ensure that the prisoner has each of the  
28 following in his or her possession: a discharge medical summary,  
29 full medical records, state identification, parole medications, and  
30 all property belonging to the prisoner. After discharge, any  
31 additional records shall be sent to the prisoner's forwarding  
32 address.

33 (10) The secretary shall issue a directive to medical and  
34 correctional staff employed by the department that details the  
35 guidelines and procedures for initiating a recall and resentencing  
36 procedure. The directive shall clearly state that any prisoner who  
37 is given a prognosis of six months or less to live is eligible for  
38 recall and resentencing consideration, and that recall and  
39 resentencing procedures shall be initiated upon that prognosis.

(f) Notwithstanding any other provision of this section, for purposes of paragraph (3) of subdivision (h), any ~~allegation~~ *factor* that ~~makes~~ a defendant is eligible for state prison due to a prior or current conviction, sentence enhancement, or because he or she is required to register as a sex offender shall not be subject to dismissal pursuant to Section 1385.

(g) A sentence to state prison for a determinate term for which only one term is specified, is a sentence to state prison under this section.

(h) (1) Except as provided in ~~paragraph~~ *paragraphs (3) and (6)*, a felony punishable pursuant to this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.

(2) Except as provided in ~~paragraph~~ *paragraphs (3) and (6)*, a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.

(3) Notwithstanding paragraphs (1) and (2), where the defendant (A) has a prior or current felony conviction for a serious felony described in subdivision (c) of Section 1192.7 or a prior or current conviction for a violent felony described in subdivision (c) of Section 667.5, (B) has a prior felony conviction in another jurisdiction for an offense that has all the elements of a serious felony described in subdivision (c) of Section 1192.7 or a violent felony described in subdivision (c) of Section 667.5, (C) is required to register as a sex offender pursuant to Chapter 5.5 (commencing with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime and as part of the sentence an enhancement pursuant to Section 186.11 is imposed, an executed sentence for a felony punishable pursuant to this subdivision shall be served in state prison. *Notwithstanding any other law, no further pleading or proof of an offense, prior conviction, enhancement, or requirement to register as a sex offender, that makes a person ineligible to serve a term of imprisonment in a county jail pursuant to this paragraph, is required.*

(4) Nothing in this subdivision shall be construed to prevent other dispositions authorized by law, including pretrial diversion, deferred entry of judgment, or an order granting probation pursuant to Section 1203.1.

(5) The court, when imposing a sentence pursuant to paragraph (1) or (2) of this subdivision, may commit the defendant to county jail as follows:

(A) For a full term in custody as determined in accordance with the applicable sentencing law.

(B) For a term as determined in accordance with the applicable sentencing law, but suspend execution of a concluding portion of the term selected in the court's discretion, during which time the defendant shall be supervised by the county probation officer in accordance with the terms, conditions, and procedures generally applicable to persons placed on probation, for the remaining unserved portion of the sentence imposed by the court. The period of supervision shall be mandatory, and may not be earlier terminated except by court order. During the period when the defendant is under such supervision, unless in actual custody related to the sentence imposed by the court, the defendant shall be entitled to only actual time credit against the term of imprisonment imposed by the court. *Every person sentenced pursuant to this subparagraph, and his or her residence and possessions, shall be subject to search or seizure at any time, with or without a warrant and with or without cause, by an agent of the supervising county agency or by a peace officer with the approval of the supervising county agency.*

*(6) In the case of any person convicted of one or more felonies committed while the person is on mandatory supervision pursuant to subparagraph (B) of paragraph (5), the remaining time the person has on the mandatory supervision term shall be served in state prison, and the new term of imprisonment shall be served in state prison and shall commence from the time the person would otherwise have completed the mandatory supervision term.*

~~(6)~~

(7) The sentencing changes made by the act that added this subdivision shall be applied prospectively to any person sentenced on or after October 1, 2011.

(i) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

*SEC. 2. Section 1170 of the Penal Code, as amended by Section 7.7 of Chapter 361 of the Statutes of 2011, is amended to read:*

1 1170. (a) (1) The Legislature finds and declares that the  
2 purpose of imprisonment for crime is punishment. This purpose  
3 is best served by terms proportionate to the seriousness of the  
4 offense with provision for uniformity in the sentences of offenders  
5 committing the same offense under similar circumstances. The  
6 Legislature further finds and declares that the elimination of  
7 disparity and the provision of uniformity of sentences can best be  
8 achieved by determinate sentences fixed by statute in proportion  
9 to the seriousness of the offense as determined by the Legislature  
10 to be imposed by the court with specified discretion.

11 (2) Notwithstanding paragraph (1), the Legislature further finds  
12 and declares that programs should be available for inmates,  
13 including, but not limited to, educational programs, that are  
14 designed to prepare nonviolent felony offenders for successful  
15 reentry into the community. The Legislature encourages the  
16 development of policies and programs designed to educate and  
17 rehabilitate nonviolent felony offenders. In implementing this  
18 section, the Department of Corrections and Rehabilitation is  
19 encouraged to give priority enrollment in programs to promote  
20 successful return to the community to an inmate with a short  
21 remaining term of commitment and a release date that would allow  
22 him or her adequate time to complete the program.

23 (3) In any case in which the punishment prescribed by statute  
24 for a person convicted of a public offense is a term of imprisonment  
25 in the state prison of any specification of three time periods, the  
26 court shall sentence the defendant to one of the terms of  
27 imprisonment specified unless the convicted person is given any  
28 other disposition provided by law, including a fine, jail, probation,  
29 or the suspension of imposition or execution of sentence or is  
30 sentenced pursuant to subdivision (b) of Section 1168 because he  
31 or she had committed his or her crime prior to July 1, 1977. In  
32 sentencing the convicted person, the court shall apply the  
33 sentencing rules of the Judicial Council. The court, unless it  
34 determines that there are circumstances in mitigation of the  
35 punishment prescribed, shall also impose any other term that it is  
36 required by law to impose as an additional term. Nothing in this  
37 article shall affect any provision of law that imposes the death  
38 penalty, that authorizes or restricts the granting of probation or  
39 suspending the execution or imposition of sentence, or expressly  
40 provides for imprisonment in the state prison for life. In any case

1 in which the amount of preimprisonment credit under Section  
2 2900.5 or any other provision of law is equal to or exceeds any  
3 sentence imposed pursuant to this chapter, the entire sentence shall  
4 be deemed to have been served and the defendant shall not be  
5 actually delivered to the custody of the secretary. The court shall  
6 advise the defendant that he or she shall serve a period of parole  
7 and order the defendant to report to the parole office closest to the  
8 defendant's last legal residence, unless the in-custody credits equal  
9 the total sentence, including both confinement time and the period  
10 of parole. The sentence shall be deemed a separate prior prison  
11 term under Section 667.5, and a copy of the judgment and other  
12 necessary documentation shall be forwarded to the secretary.

13 (b) When a judgment of imprisonment is to be imposed and the  
14 statute specifies three possible terms, the court shall order  
15 imposition of the middle term, unless there are circumstances in  
16 aggravation or mitigation of the crime. At least four days prior to  
17 the time set for imposition of judgment, either party or the victim,  
18 or the family of the victim if the victim is deceased, may submit  
19 a statement in aggravation or mitigation to dispute facts in the  
20 record or the probation officer's report, or to present additional  
21 facts. In determining whether there are circumstances that justify  
22 imposition of the upper or lower term, the court may consider the  
23 record in the case, the probation officer's report, other reports,  
24 including reports received pursuant to Section 1203.03, and  
25 statements in aggravation or mitigation submitted by the  
26 prosecution, the defendant, or the victim, or the family of the victim  
27 if the victim is deceased, and any further evidence introduced at  
28 the sentencing hearing. The court shall set forth on the record the  
29 facts and reasons for imposing the upper or lower term. The court  
30 may not impose an upper term by using the fact of any  
31 enhancement upon which sentence is imposed under any provision  
32 of law. A term of imprisonment shall not be specified if imposition  
33 of sentence is suspended.

34 (c) The court shall state the reasons for its sentence choice on  
35 the record at the time of sentencing. The court shall also inform  
36 the defendant that as part of the sentence after expiration of the  
37 term he or she may be on parole for a period as provided in Section  
38 3000.

39 (d) When a defendant subject to this section or subdivision (b)  
40 of Section 1168 has been sentenced to be imprisoned in the state

1 prison and has been committed to the custody of the secretary, the  
2 court may, within 120 days of the date of commitment on its own  
3 motion, or at any time upon the recommendation of the secretary  
4 or the Board of Parole Hearings, recall the sentence and  
5 commitment previously ordered and resentence the defendant in  
6 the same manner as if he or she had not previously been sentenced,  
7 provided the new sentence, if any, is no greater than the initial  
8 sentence. The resentence under this subdivision shall apply the  
9 sentencing rules of the Judicial Council so as to eliminate disparity  
10 of sentences and to promote uniformity of sentencing. Credit shall  
11 be given for time served.

12 (e) (1) Notwithstanding any other law and consistent with  
13 paragraph (1) of subdivision (a), if the secretary or the Board of  
14 Parole Hearings or both determine that a prisoner satisfies the  
15 criteria set forth in paragraph (2), the secretary or the board may  
16 recommend to the court that the prisoner's sentence be recalled.

17 (2) The court shall have the discretion to resentence or recall if  
18 the court finds that the facts described in subparagraphs (A) and  
19 (B) or subparagraphs (B) and (C) exist:

20 (A) The prisoner is terminally ill with an incurable condition  
21 caused by an illness or disease that would produce death within  
22 six months, as determined by a physician employed by the  
23 department.

24 (B) The conditions under which the prisoner would be released  
25 or receive treatment do not pose a threat to public safety.

26 (C) (i) The prisoner is permanently medically incapacitated  
27 with a medical condition that renders him or her permanently  
28 unable to perform activities of basic daily living, and results in the  
29 prisoner requiring 24-hour total care, including, but not limited to,  
30 coma, persistent vegetative state, brain death,  
31 ventilator-dependency, loss of control of muscular or neurological  
32 function, and that incapacitation did not exist at the time of the  
33 original sentencing.

34 ~~The~~  
35 (ii) *The* Board of Parole Hearings shall make findings pursuant  
36 to this subdivision before making a recommendation for resentence  
37 or recall to the court. This subdivision does not apply to a prisoner  
38 sentenced to death or a term of life without the possibility of parole.

1 (3) Within 10 days of receipt of a positive recommendation by  
2 the secretary or the board, the court shall hold a hearing to consider  
3 whether the prisoner's sentence should be recalled.

4 (4) Any physician employed by the department who determines  
5 that a prisoner has six months or less to live shall notify the chief  
6 medical officer of the prognosis. If the chief medical officer  
7 concurs with the prognosis, he or she shall notify the warden.  
8 Within 48 hours of receiving notification, the warden or the  
9 warden's representative shall notify the prisoner of the recall and  
10 resentencing procedures, and shall arrange for the prisoner to  
11 designate a family member or other outside agent to be notified  
12 as to the prisoner's medical condition and prognosis, and as to the  
13 recall and resentencing procedures. If the inmate is deemed  
14 mentally unfit, the warden or the warden's representative shall  
15 contact the inmate's emergency contact and provide the information  
16 described in paragraph (2).

17 (5) The warden or the warden's representative shall provide the  
18 prisoner and his or her family member, agent, or emergency  
19 contact, as described in paragraph (4), updated information  
20 throughout the recall and resentencing process with regard to the  
21 prisoner's medical condition and the status of the prisoner's recall  
22 and resentencing proceedings.

23 (6) Notwithstanding any other provisions of this section, the  
24 prisoner or his or her family member or designee may  
25 independently request consideration for recall and resentencing  
26 by contacting the chief medical officer at the prison or the  
27 secretary. Upon receipt of the request, the chief medical officer  
28 and the warden or the warden's representative shall follow the  
29 procedures described in paragraph (4). If the secretary determines  
30 that the prisoner satisfies the criteria set forth in paragraph (2), the  
31 secretary or board may recommend to the court that the prisoner's  
32 sentence be recalled. The secretary shall submit a recommendation  
33 for release within 30 days in the case of inmates sentenced to  
34 determinate terms and, in the case of inmates sentenced to  
35 indeterminate terms, the secretary shall make a recommendation  
36 to the Board of Parole Hearings with respect to the inmates who  
37 have applied under this section. The board shall consider this  
38 information and make an independent judgment pursuant to  
39 paragraph (2) and make findings related thereto before rejecting

1 the request or making a recommendation to the court. This action  
2 shall be taken at the next lawfully noticed board meeting.

3 (7) Any recommendation for recall submitted to the court by  
4 the secretary or the Board of Parole Hearings shall include one or  
5 more medical evaluations, a postrelease plan, and findings pursuant  
6 to paragraph (2).

7 (8) If possible, the matter shall be heard before the same judge  
8 of the court who sentenced the prisoner.

9 (9) If the court grants the recall and resentencing application,  
10 the prisoner shall be released by the department within 48 hours  
11 of receipt of the court's order, unless a longer time period is agreed  
12 to by the inmate. At the time of release, the warden or the warden's  
13 representative shall ensure that the prisoner has each of the  
14 following in his or her possession: a discharge medical summary,  
15 full medical records, state identification, parole medications, and  
16 all property belonging to the prisoner. After discharge, any  
17 additional records shall be sent to the prisoner's forwarding  
18 address.

19 (10) The secretary shall issue a directive to medical and  
20 correctional staff employed by the department that details the  
21 guidelines and procedures for initiating a recall and resentencing  
22 procedure. The directive shall clearly state that any prisoner who  
23 is given a prognosis of six months or less to live is eligible for  
24 recall and resentencing consideration, and that recall and  
25 resentencing procedures shall be initiated upon that prognosis.

26 (f) Notwithstanding any other provision of this section, for  
27 purposes of paragraph (3) of subdivision (h), any ~~allegation~~ *factor*  
28 that *makes* a defendant is eligible for state prison due to a prior or  
29 current conviction, sentence enhancement, or because he or she is  
30 required to register as a sex offender shall not be subject to  
31 dismissal pursuant to Section 1385.

32 (g) A sentence to state prison for a determinate term for which  
33 only one term is specified, is a sentence to state prison under this  
34 section.

35 (h) (1) Except as provided in ~~paragraph~~ *paragraphs (3) and*  
36 *(6)*, a felony punishable pursuant to this subdivision where the  
37 term is not specified in the underlying offense shall be punishable  
38 by a term of imprisonment in a county jail for 16 months, or two  
39 or three years.

1 (2) Except as provided in ~~paragraph~~ *paragraphs (3) and (6)*, a  
2 felony punishable pursuant to this subdivision shall be punishable  
3 by imprisonment in a county jail for the term described in the  
4 underlying offense.

5 (3) Notwithstanding paragraphs (1) and (2), where the defendant  
6 (A) has a prior or current felony conviction for a serious felony  
7 described in subdivision (c) of Section 1192.7 or a prior or current  
8 conviction for a violent felony described in subdivision (c) of  
9 Section 667.5, (B) has a prior felony conviction in another  
10 jurisdiction for an offense that has all of the elements of a serious  
11 felony described in subdivision (c) of Section 1192.7 or a violent  
12 felony described in subdivision (c) of Section 667.5, (C) is required  
13 to register as a sex offender pursuant to Chapter 5.5 (commencing  
14 with Section 290) of Title 9 of Part 1, or (D) is convicted of a crime  
15 and as part of the sentence an enhancement pursuant to Section  
16 186.11 is imposed, an executed sentence for a felony punishable  
17 pursuant to this subdivision shall be served in state prison.  
18 *Notwithstanding any other law, no further pleading or proof of an*  
19 *offense, prior conviction, enhancement, or requirement to register*  
20 *as a sex offender, that makes a person ineligible to serve a term*  
21 *of imprisonment in a county jail pursuant to this paragraph, is*  
22 *required.*

23 (4) Nothing in this subdivision shall be construed to prevent  
24 other dispositions authorized by law, including pretrial diversion,  
25 deferred entry of judgment, or an order granting probation pursuant  
26 to Section 1203.1.

27 (5) The court, when imposing a sentence pursuant to paragraph  
28 (1) or (2) of this subdivision, may commit the defendant to county  
29 jail as follows:

30 (A) For a full term in custody as determined in accordance with  
31 the applicable sentencing law.

32 (B) For a term as determined in accordance with the applicable  
33 sentencing law, but suspend execution of a concluding portion of  
34 the term selected in the court's discretion, during which time the  
35 defendant shall be supervised by the county probation officer in  
36 accordance with the terms, conditions, and procedures generally  
37 applicable to persons placed on probation, for the remaining  
38 unserved portion of the sentence imposed by the court. The period  
39 of supervision shall be mandatory, and may not be earlier  
40 terminated except by court order. During the period when the

1 defendant is under such supervision, unless in actual custody  
2 related to the sentence imposed by the court, the defendant shall  
3 be entitled to only actual time credit against the term of  
4 imprisonment imposed by the court. *Every person sentenced*  
5 *pursuant to this subparagraph, and his or her residence and*  
6 *possessions, shall be subject to search or seizure at any time, with*  
7 *or without a warrant, and with or without cause, by an agent of*  
8 *the supervising county agency or by a peace officer with the*  
9 *approval of the supervising county agency.*

10 (6) *In the case of any person convicted of one or more felonies*  
11 *committed while the person is on mandatory supervision pursuant*  
12 *to subparagraph (B) of paragraph (5), the remaining time the*  
13 *person has on the mandatory supervision term shall be served in*  
14 *state prison, and the new term of imprisonment shall be served in*  
15 *state prison and shall commence from the time the person would*  
16 *otherwise have completed the mandatory supervision term.*

17 ~~(6)~~

18 (7) The sentencing changes made by the act that added this  
19 subdivision shall be applied prospectively to any person sentenced  
20 on or after October 1, 2011.

21 (i) This section shall become operative on January 1, 2014.

22 SEC. 3. *Section 3456 of the Penal Code is amended to read:*

23 3456. (a) The county agency responsible for postrelease  
24 supervision, as established by the county board of supervisors  
25 pursuant to subdivision (a) of Section 3451, shall maintain  
26 postrelease supervision over a person under postrelease supervision  
27 pursuant to this title until one of the following events occurs:

28 (1) The person has been subject to postrelease supervision  
29 pursuant to this title for three years at which time the offender shall  
30 be immediately discharged from postrelease supervision.

31 (2) Any person on postrelease supervision for six consecutive  
32 months with no violations of his or her conditions of postrelease  
33 supervision that result in a custodial sanction may be considered  
34 for immediate discharge by the supervising county.

35 (3) The person who has been on postrelease supervision  
36 continuously for one year with no violations of his or her conditions  
37 of postrelease supervision that result in a custodial sanction shall  
38 be discharged from supervision within 30 days.

39 (4) Jurisdiction over the person has been terminated by operation  
40 of law.

1 (5) Jurisdiction is transferred to another supervising county  
2 agency.

3 (6) Jurisdiction is terminated by the revocation hearing officer  
4 upon a petition to revoke and terminate supervision by the  
5 supervising county agency.

6 (7) *Jurisdiction is terminated by a new term of imprisonment*  
7 *for three years or longer for a new criminal conviction.*

8 (b) Time during which a person on postrelease supervision is  
9 suspended because the person has absconded shall not be credited  
10 toward any period of postrelease supervision.

11 (c) *Time during which a person on postrelease supervision is*  
12 *in custody for a custodial sanction of a postrelease supervision*  
13 *condition or a new criminal conviction shall not be credited toward*  
14 *a discretionary six-month discharge pursuant to paragraph (2) of*  
15 *subdivision (a) or a mandatory 12-month discharge pursuant to*  
16 *paragraph (3) of subdivision (a).*

17 SEC. 4. Section 12022 of the Penal Code is amended to read:

18 12022. (a) (1) Except as provided in subdivisions (c) and (d),  
19 any person who is armed with a firearm in the commission of a  
20 felony or attempted felony shall be punished by an additional and  
21 consecutive term of imprisonment pursuant to subdivision (h) of  
22 Section 1170 for one year, unless the arming is an element of that  
23 offense. This additional term shall apply to any person who is a  
24 principal in the commission of a felony or attempted felony if one  
25 or more of the principals is armed with a firearm, whether or not  
26 the person is personally armed with a firearm.

27 (2) Except as provided in subdivision (c), and notwithstanding  
28 subdivision (d), if the firearm is an assault weapon, as defined in  
29 Section 30510 or Section 30515, or a machinegun, as defined in  
30 Section 16880, or a .50 BMG rifle, as defined in Section 30530,  
31 the additional and consecutive term described in this subdivision  
32 shall be three years imprisonment pursuant to subdivision (h) of  
33 Section 1170 whether or not the arming is an element of the offense  
34 of which the person was convicted. The additional term provided  
35 in this paragraph shall apply to any person who is a principal in  
36 the commission of a felony or attempted felony if one or more of  
37 the principals is armed with an assault weapon or machinegun, or  
38 a .50 BMG rifle, whether or not the person is personally armed  
39 with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment pursuant in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be in the state prison for one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Sections 18000 and 18005.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment ~~pursuant to subdivision (h) of Section 1170~~ *in state prison* for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment pursuant to subdivision (h) of Section 1170 for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

~~SECTION 1. Pursuant to Section 118 of the Streets and Highways Code, the Department of Transportation may sell excess~~

1 ~~real property in the state-owned area associated with the~~  
2 ~~park-and-ride lot at the Clark Avenue West exit from State~~  
3 ~~Highway Route 135 in the Town of Orcutt to the County of Santa~~  
4 ~~Barbara for purposes of erecting a veterans' memorial at that~~  
5 ~~location.~~

6 ~~SEC. 2. The Legislature finds and declares that a special law~~  
7 ~~is necessary and that a general law cannot be made applicable~~  
8 ~~within the meaning of Section 16 of Article IV of the California~~  
9 ~~Constitution because of the unique need to erect a veterans'~~  
10 ~~memorial in the Town of Orcutt in a publicly accessible location.~~

O